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McKalla Place Amendment Package

As the Council Members for Districts 1, 7, 8, and 10, we believe that any potential soccer stadium deal must meet the principles we outlined last June:

- Ensuring the team owners invest in our community.
- Fully accounting for all City subsidies.
- Having all our options on the table.
- Having a full and complete proposal in hand.
- Not making open-ended commitments.
- Enforcing the deal.
- Providing public benefit for public property.
- Making credible mobility and environmental commitments.

Unfortunately, the negotiated soccer stadium terms provided in the term sheet do not meet these principles. So, we have put forward a package of amendments consistent with these principles that we believe would improve the agreement currently on the table. By our analysis, this package would reduce the risks, costs, and forgone revenues to local government and increase Precourt Sports Ventures (PSV)'s commitment to the Austin community, while still proposing that PSV spend less than what they would in a scenario in which they simply paid rent and property taxes.

This package would not provide us with everything we would ideally want to see in such a deal, but we believe it would nevertheless be a significant improvement. We have described our concerns with the current negotiated agreement and our proposed changes below.

1. Principle:	Ensuring the Team Owners Invest in Our Community.
Attainment:	Principle Partially Met
Discussion:	We believe that it is in the best interests of both the City and PSV for PSV to invest in our community and avoid asking City taxpayers to shoulder either direct costs (through City spending) or indirect costs (through forgone revenue that ultimately shifts PSV's share of the tax burden onto other taxpayers). PSV is effectively proposing to provide a package of 'community benefits' in lieu of other costs, such as purchasing the property, paying market rent, or paying property taxes. While the negotiated term sheet improved upon the initial proposal by requiring some rent, we are still concerned that the deal on the table contains substantial direct and indirect costs and fails to maximize the return via 'community benefits.' For instance, under the proposed agreement, PSV would be exempt from all property taxes (at an estimated forgone revenue of over \$5 million in the first year alone, ¹ escalating annually after that) and only pay roughly 12 percent of what an appraisal of the property identified as the market rent for highest and best use. ² On the 'community benefits' side, PSV is proposing to commit to providing a 'community benefits' package over only the <i>initial</i> 20-year term and does not mention renewal terms. Almost half of this package is proposed to be used for a boys-only MLS academy – a program which the New York

¹ Forgone property taxes have been estimated by using the cost approach to estimate the property's value and then applying the current tax rates for the City of Austin, Travis County, Austin Independent School District, Austin Community College, and Central Health.

² This 12 percent figure is calculated by dividing the net rent paid (ie. total rent, less the portion of rent returned to PSV in the form of capital repairs contributions) (net rent paid: \$5.75 million over 20 years) by the market rent for highest and best use according to the 2016 draft appraisal (roughly \$47 million over 20 years).

Times has reported MLS already requires its teams to provide. We are concerned that the deal currently on the table does not provide an adequate return to the Austin community.

Proposals:

1.1 Require PSV to Pay Rent Closer to Market Rate. Our strong preference would be for PSV to pay the full market rent estimated for the highest and best use of the property, as calculated in the 2016 draft appraisal for the McKalla Place site. We believe this would provide the best return to the taxpayers for public property. However, in lieu of that we would also submit for consideration a sub-market rent of \$958,720, escalating at a rate of 2 percent annually. This money would be directed to the City’s General Fund to help finance City services. This would provide PSV with the McKalla Place site for a rental rate that is half of what the City would otherwise charge for highest and best use and would ensure that the community is deriving public benefit from this publicly owned stadium. The site would continue to be tax-exempt, at a forgone revenue cost to the City of an estimated \$25 million to \$38 million over the initial 20-year term.³

1.2 Require PSV to Make Annual Payments to the Other Local Governments. Our strong preference would be for PSV to pay their property taxes, which we believe would avoid shifting their portion of the tax burden onto other taxpayers. However, we would also submit for consideration a proposal that would provide for PSV to make payments to other local governments for a sum total of \$958,720 in the first year, escalating at a rate of 2 percent annually (ie. half of what the 2016 draft appraisal identified as market rent for the property’s highest and best use). The payments would be divided according to the percentage of property taxes each entity would have collected from the property.

- AISD: 67 percent (\$645,944 in the first year)
- Travis County: 21 percent (\$199,961 in the first year)
- ACC: 6 percent (\$58,192 in the first year)
- Central Health: 6 percent (\$54,623 in the first year)
- TOTAL: 100 percent (\$958,720 in the first year)

Over a 20-year period, PSV would pay roughly \$23 million to AISD, Travis County, ACC, and Central Health – which is still significantly lower than the \$99 million to \$149 million they would otherwise owe if they were required to pay property taxes to these entities.³ Additionally, it may be that ‘recapture’ is not applicable to the AISD payment, in which case the full value of that payment would benefit the school district.

1.3 Require ‘Community Benefits’ Commitments Continue Through Renewal Terms. The current term sheet only commits PSV to providing the ‘community benefits’ package “over the initial term of the StadiumCo Lease.” We believe that PSV should be required to continue to provide these community benefits for as long as the property remains exempt from property taxes and leased at a sub-market rate. Accordingly, we would propose that the final agreement require PSV to continue to fund the community benefits during any renewal terms, as well.

1.4 Require Non-Profit Donations Increase at a Higher Rate. In lieu of paying property taxes, PSV is proposing a package of ‘community benefits.’ Exhibit 4 in the term sheet indicates that PSV expects their community benefits to increase at a rate of 2 percent annually. We believe this is low considering the rate at which City property tax burden has grown annually in Austin; for context, City staff have reported that over the past decade the amount Austin taxpayers paid

³ The property tax growth rates over time are estimated by applying a constant 2 percent growth in tax burden annually (for the lower figure) and 6 percent (for the higher figure). District 7 staff worked with City staff to confirm the reasonableness of this methodology and these assumptions. For context, over the past decade, taxpayers have paid an average of 6.8 percent over the tax burden from the effective City maintenance and operations (M&O) tax rate annually.

in the City's maintenance and operations (M&O) property taxes has grown an average of 6.8 percent over tax burden from the effective M&O rate annually. We would propose that PSV's donations to local non-profits (their contributions to Foundation Communities and to Austin charitable organizations) instead increase at a rate of 3 percent. This would increase the value of these contributions by roughly \$579,000 over the first 20-year term (of which PSV would likely be responsible only for \$457,000, after adjusting for tax deductions).

1.5 Requiring that PSV Truly Fund Capital Repairs. The term sheet indicates that "StadiumCo shall be responsible for all capital repairs." However, it also requires the City to contribute \$2.5 million over the initial 20-year term to capital repairs. We believe that PSV should fully commit to covering these costs and that they should not be borne by the City.

2. Principle: Fully Accounting for All City Subsidies.

Attainment: Principle Partially Met

Discussion: We believe it is important for Council to have a full and complete understanding of and estimates for all City subsidies and commitments. This includes direct spending on infrastructure and services as well as lost potential revenue (such as sub-market rent or property tax exemptions), which shifts PSV's share of taxes onto other Austin taxpayers. Having information on these direct and indirect costs allows Council and the community to review them and analyze the impact they have on the City's finances.

To date, staff have provided a number of official estimates for forgone City property taxes, market rent for highest and best use, insurance costs, City contributions to capital repairs, and certain infrastructure costs. However, there are outstanding estimates on other potentially significant costs, such as those related to the training complex and other infrastructure requirements. We believe Council should have full information on these costs when making a final decision.

Proposals: **2.1 Estimate All Direct Costs and Forgone Revenues Before Final Approval.** We propose that any final agreement must return to Council for approval and be accompanied by a full accounting of all direct costs and forgone revenues envisioned in the agreement.

3. Principle: Having All Our Options on the Table.

Attainment: Principle Met

Discussion: We believe Council is in the best negotiating and decision-making position when we have all of our options in front of us. To that end, we would like to see information on other potential proposals and any opportunity cost analyses presented to Council concurrent with a proposed stadium deal. Council met this principle by adopting Resolution No. 20180628-060 at its June 28, 2018 meeting.

4. Principle: Having a Full and Complete Proposal in Hand.

Attainment: Principle Not Met

Discussion: We believe that it is important for Council to have a complete proposal with all terms and commitments defined and with no loose ends left for future discussion. This ensures that Council has a full understanding of the extent of the City's responsibilities. However, the current term sheet has a number of areas which are ill-defined or lack important details, such as the provisions for enforcing the non-relocation agreement and the full extent of what PSV will propose the City provide for a training complex.

Proposals: **4.1 Requiring the Final Agreement Return to Council for Approval.** This agreement would make significant commitments on behalf of the City and would represent one of the largest incentive packages the City has provided to a private entity. However, many important aspects of the proposed agreement have yet to be fully defined, including the provisions of the non-relocation agreement, PSV's commitments to funding "certain" infrastructure, and a number of other significant items. As a result, we would propose that Council direct the City Manager

to negotiate an agreement and bring it to the Council for final approval, instead of granting the City Manager the authority to execute a final agreement without Council approval.

4.2 Presenting a Comprehensive Agreement to Council with No ‘Side Agreements’ – Especially Regarding the Training Complex. To date, PSV has presented little to no details regarding what commitments they would ask the City to make for their training complex. We are concerned that the training complex proposal could request significant commitments from the City. As a result, we believe the entire proposal, including training complex terms, should be considered comprehensively so that Council has a full understanding of *all* City obligations. Accordingly, we propose requiring all details on a potential training complex agreement be presented to Council at the same time the final proposed agreement on the McKalla Place property returns to Council for consideration.

5. Principle: Not Making Open-Ended Commitments.

Attainment: Principle Not Met

Discussion: We believe that the terms of any agreement should be well-defined and not provide for open-ended commitments on behalf of the City of Austin. Clearly establishing defined limits on the City’s obligations helps the City better manage its finances, plan ahead, and avoid the risk of unexpected financial obligations.

However, the negotiated proposal contains a number of provisions that are not well-defined and/or leave the City exposed to open-ended commitments. These include the following:

- **Environmental Remediation Costs.** The negotiated agreement requires the City to cover any environmental remediation costs that occur over the lifetime of the deal. City staff estimate that there will be no remediation costs due to remediation that occurred in 2006. However, the agreement language exposes the City to the risk that any remediation needs that may arise at any point in time must be borne by the City. For a point of comparison, under the Miami soccer agreement term sheet, the team is responsible for remediation costs.
- **Event Services Costs.** The negotiated agreement requires PSV to finance event services in the stadium and also “on the site and off the site... *other than* any MLS or other professional soccer game or event held at the stadium,” which appears to make the City responsible for some on-site services, as well. City staff has indicated that the intent is to have the City take responsibility only for off-site services; the agreement language may need further clarification to ensure the intent is clear. City staff have indicated they do not believe the City-borne event services costs to be significant. However, the full extent of these costs remains largely undefined, which may necessitate the use of a cap on City obligations to protect against open-ended commitments.

Proposals: **5.1 Capping City Remediation Commitments.** We would propose a cap of \$500,000 on City funding for any remediation costs in order to avoid an open-ended commitment. As noted, City staff estimate there will be no remediation costs.

5.2 Capping Event Services Costs. We would propose a cap of \$200,000 per year (for a total of \$4 million over the 20-year term) on all City-borne event services costs. As noted, City staff indicated that they expect City-borne event services cost not to be significant.

6. Principle: Enforcing the Deal.

Attainment: Principle Partially Met

Discussion: We believe it is vital for the City to be able to enforce the terms of a deal in a way that ensures, to the maximum extent possible, that all parties are abiding by the agreement. A strong enforcement

mechanism demonstrates that all parties are negotiating in good faith and have full confidence in their respective abilities to meet their responsibilities. However, while the current agreement provides for certain enforcement processes and mechanisms, it lacks important details on others. Most notably, the term sheet lacks important details on the following:

- **Non-Relocation Penalties.** This process has clearly illustrated the risk to the Austin community of team relocation in the future. We believe it is important for Council to have a full understanding of the relative strength or weakness of these provisions.
- **Capital Repairs and Maintenance.** The term sheet indicates that “StadiumCo shall be responsible for all capital repairs.” However, one of City staff’s consultants on the negotiation stated at the August 1 meeting that “as we have seen over the history of stadium development, [capital repairs and improvements] are not always funded on an ongoing basis, so you may get to year 10, year 15 and have a major capital cost that the team is not prepared to pay for.” We believe that the final agreement should allow the City to enforce the provision that PSV maintain the stadium “in a first-class manner.”
- **Minimizing Community Impact.** The term sheet indicates that the City and PSV “will endeavor to minimize the impact of the Stadium Project on neighboring communities.” However, it lacks details on how this will be accomplished. City staff noted on the McKalla Place webpage that the City would give PSV “the right to produce as many events as they wish” and indicated in the response to Resolution No. 20180322-99 that the stadium would be exempt from the City’s noise regulations. We believe the final agreement should include clear and enforceable protections for the surrounding communities.

Proposals:

6.1 Specifying Strong Financial Penalties for Relocation. We would propose that the City negotiate strong financial penalties that discourage relocation and protect the Austin community, including the following:

- Returning the land to developable conditions.
- Reimbursing the City for all City-borne remediation costs, adjusted for inflation.
- Reimbursing the City for forgone rent over the years in which the stadium was used for soccer (calculated as the difference between rent paid and market rent for highest and best use: \$1,917,500 in the first year, escalating at 2 percent per year thereafter).

6.2 Specifying Penalties for Stadium Condition. We would propose that City staff include terms in the final agreement that ensure that PSV will meet its responsibilities related to capital repairs and stadium maintenance.

6.3 Specifying a Range of Enforcement Options. City staff have indicated that the final agreement will provide the City the ability to terminate the lease if PSV fails to meet its obligations. We fully support this. We would also propose that City staff include, *in addition*, a range of other, well-defined enforcement mechanisms that do not rise to the level of full termination. This would improve the City’s ability to enforce the agreement in areas where issues occur but do not rise to a level where full termination would be necessary.

6.4 Minimizing Impact to Community through Clear Rules. We would propose that staff examine relevant City policies and regulations related to hours, noise, and other quality of life issues – especially for special events and in the downtown – and specify enforceable rules in the final agreement that can help minimize impacts to surrounding communities.

6.5 Enforcing the 'No Fee Waivers' Provision. The term sheet indicates that PSV will not require construction fee waivers, but then includes an exception "as specifically noted elsewhere herein or in the Stadium Agreements." We would propose that staff make this no-waiver provision clear in the final agreement and provide that any request for fee waivers must come before the City Council for approval on a case-by-case basis.

7. Principle:

Attainment:

Discussion:

Providing Public Benefit for Public Property.

Principle Partially Met

We believe that if the City is proposed to continue to own the McKalla Place property in order to exempt PSV from property taxes, then there should be strong provisions maintaining City control and maximizing commensurate community benefits. The negotiated term sheet did expand the number of times the City and other public entities could use this City property rent-free each year, but it also lacked important details on certain community benefits and City protections and omitted key opportunities. Some of our main concerns are outlined below:

- **Parkland Accessibility.** The term sheet indicates that the intention is to provide roughly eight acres of open space that is "accessible to the general public." However, it does not include provisions governing the way PSV designs it and uses it throughout the year. The terms of open space design and programming are often significant discussion points in large projects, such as Planned Unit Developments, because the way such spaces are designed and used can determine whether they truly remain "publicly accessible" in practice.
- **Revenue-Sharing.** Council Resolution No. 20180628-130 prioritized examining "revenue-sharing opportunities." We believe that if the stadium is truly to be considered 'publicly owned,' all taxpayers should directly benefit from its operation. However, the current term sheet does not envision any form of revenue-sharing.
- **Monetization of Public Infrastructure.** The term sheet indicates that the City would agree to help PSV brand City-owned infrastructure "in and around the Site" with MLS and sponsors' logos, including on "sidewalks, lighting and signage structures, manhole covers, fire hydrants, etc." We have concerns about establishing a special agreement requiring the City to cooperate in allowing a private company to monetize basic public infrastructure. We also believe that such an agreement poses certain risks to the City, as well. For instance, one of the Columbus Crew's current sponsors, Papa John's, has recently faced public backlash regarding statements their chairman made.⁴ The City should retain full control over how it allows its public infrastructure to be used in order to mitigate against these types of risks.

Proposals:

7.1 Specifying Authority over Public Parkland. In order to ensure that the on-site open space remains truly accessible to the public, we would ask for the following:

- **An Annual Limit to Private Programming on the Parkland and Open Space.** We would propose that PSV has the right to program the parks space for 35 days per year. Any programming beyond that allotment would require PARD approval. Additionally, any programming on a City-recognized holiday would also require PARD approval.
- **PARD Participation in Parkland and Open Space Design.** We would ask that PARD and PSV collaborate on the parks and open space design, and that PARD retain reasonable approval rights over design.

⁴ Hsu, Tiffany. "Racial Slur Leads to Papa John's Founder Quitting Chairman Post," *New York Times* (11 July 2018).

7.2 Providing Ticket Revenue-Sharing. Other stadium deals around the country include revenue-sharing ticket surcharges. These range from \$1 per ticket (in the Los Angeles area) to \$2 per ticket (in Orlando) to \$3 per ticket (in the Denver area). We propose a \$3 per ticket surcharge, with the revenues utilized as follows:

- \$1 for Mobility Improvements in the Area
- \$1 for the Housing Trust Fund
- \$1 for the General Fund
\$3 Total Per-Ticket Surcharge

Alternatively, instead of a ticket surcharge, we could consider a different type of revenue-sharing through which the City would be entitled to a certain percentage of ticket sales revenues. Under this option, we would propose the City receive 10 percent of ticket revenues, with a third for mobility improvements in the area, a third for the Housing Trust Fund, and a third for the General Fund.

(Another form of revenue-sharing is also envisioned in Proposal 8.3)

7.3 Maintaining City Control over Public Infrastructure. We would propose that the City should retain ultimate authority over the branding of basic infrastructure such as sidewalks, fire hydrants, manhole covers, etc.

7.4 Maintaining City Control over Stadium Naming Rights. We would propose that, as a public stadium, the City should retain final approval authority over the stadium name.

8. Principle: Making Credible Mobility & Environmental Commitments.

Attainment: Principle Partially Met

Discussion: We believe that a potential stadium deal needs to account for the mobility impact on the surrounding community and for the environmental sensitivity of the area. Improving public transit service in the McKalla Place area is crucial, considering that PSV proposes providing only 1,000 on-site parking spaces (all of which would be reserved for VIP or personnel) and because CapMetro has plans to close the nearest train station (Kramer Lane) and move it farther north. The negotiated agreement does offer a transportation plan, but it lacks sufficient details on what that would entail and how its provisions would be funded; it also fails to provide a train station, which was one of Council's priorities in Resolution No. 20180628-060 and Resolution No. 20180628-130.

Proposals: **8.1 Ensure that PSV Meets Their 'Rough Proportionality' Requirements.** We have concerns about whether the phrasing of the term sheet (that PSV will fund only "certain Stadium Project-related off-site infrastructure") will allow PSV to avoid paying for their share of Transportation Impact Analysis-identified improvements required under the City's 'rough proportionality' requirements. We would ask that the City clarify this and ensure PSV is responsible for their standard share of TIA improvements.

8.2 Require PSV to Fund a Train Station. Local developers interested in the McKalla Place site have indicated that they would fully fund a CapMetro rail station on this site. We believe that PSV should meet this same standard and commit to funding an on-site train station as a key part of their mobility strategy.

8.3 Parking Revenue-Sharing to Fund Mobility Improvements. We would propose that, in exchange for allowing PSV to monetize publicly owned parking spaces, the City should receive a portion of parking revenues (we would propose 30 percent, which is the percentage of Columbus Crew parking revenues that the Ohio Exposition Commission receives currently).

These revenues would be dedicated solely to funding any *unfunded* portions of Transportation Impact Analysis-identified projects (ie. PSV would still be responsible for funding their share of improvements under the City's 'rough proportionality' regulations) and any unfunded portions of the Transportation and Parking Plan. PSV will be entitled to retain all parking revenues only after all TIA-identified projects and Transportation and Parking Plan needs have been fully met.

8.4 Establishing a Well-Defined Transportation and Events Services Plan. The term sheet provides for a Transportation and Parking Plan and certain related details. We would propose that City staff include the following opportunities in the negotiations over this plan and that the plan ultimately return to Council for consideration:

- Providing structure parking opportunities;
- Providing Residential Permit Parking participation and enforcement for the affected surrounding areas on game days and during major events; and
- Clearly defining roles and responsibilities for implementation and limiting the City's exposure to financial obligations and open-ended commitments.

8.5 Require At Least a Three-Star Austin Energy Green Building Rating. PSV is currently proposing meeting at least a two-star AE Green Building rating. We believe that a three-star rating is more appropriate. Planned Unit Development projects are required to meet a two-star rating as a minimum requirement but are credited for providing a community benefit if they commit to achieving a three-star rating or higher. We believe that PSV should meet this same standard.